

## EXHIBIT 17

To the Mao Declaration ISO  
Plaintiffs' Administrative  
Motion re: Google's Production  
of Documents Improperly  
Withheld as Privileged

REDACTED DOCUMENT  
SOUGHT TO BE SEALED

*Confidential*  
*Subject to Protective Order*

**NLIN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

CHASOM BROWN, et al.,

Plaintiff,

v.

GOOGLE LLC,

Defendants.

Case No. 5:20-cv-03664-LHK

**EXPERT REPORT OF BRUCE A. STROMBOM  
MAY 27, 2022**

**CONFIDENTIAL  
SUBJECT TO PROTECTIVE ORDER**

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For example, the New Account Creation Agreement explained that Google collects information such as “device IDs, IP addresses, cookies data, and location” when a user uses “apps or sites that use Google services like ads, Analytics, and the YouTube video player,” and that this data could be used to “[d]eliver personalized ads,... both on Google services and on sites and apps that partner with Google.”<sup>33</sup> Further, the FAQs to the Consent Bump Agreement explained that as users browse websites that use Google’s services, such as advertising services or analytics tools, their “web browser may send certain information to Google that may include the web address of the page that you’re visiting, your IP address, or cookies previously set by the site or Google.” It further explains that “[t]he features described today don’t change the types of data collected from these websites and apps - they simply change how that data is stored and used.” [REDACTED] of U.S. Google Account Holders who were shown the Consent Bump Agreement selected “I Agree” and [REDACTED] of U.S. Google Account Holders who viewed the New Account Holder Agreement selected “I agree.”<sup>34</sup> Further, I understand that class members may not have been injured if they were aware of Google’s data collection practices. Class members could have become aware of Google’s data collection practices through a variety of means, which I detail below:

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<sup>33</sup> GOOG-CABR-04067825-867 at 829.

<sup>34</sup> GOOG-CABR-05424629; GOOG-CABR-05435660. I understand that Plaintiffs acknowledged they were aware of, and consented to, Google’s collection of the At-Issue Data when they were in a browser mode other than private mode. Plaintiffs allege that “[i]t is *common knowledge* that Google collects information about the web-browsing activity of users” and “causes targeted advertisements to be sent based on that information.” TAC ¶ 163. In depositions, Plaintiffs confirmed they were aware Google collected the disputed data when they browsed the web in a mode other than private mode. *See, e.g.*, Deposition of William Byatt, December 20, 2020 (“Byatt Depo”), p. 153; Deposition of Jeremy Davis, January 7, 2022, pp. 69, 70-71; Deposition of Christopher Castillo, February 8, 2022, pp. 70, 100; Deposition of Chasom Brown, January 13, 2022 (“Brown Depo”), pp. 61, 82, 134, 158; Deposition of Monique Trujillo, February 11, 2022 (“Trujillo Depo”), pp. 56, 62. Plaintiffs understood that the Privacy Policy specifically disclosed the data collect at issue while they were in basic mode. Castillo Depo, pp. 96-98, 100-101; Byatt Depo, pp. 116-118, 120-122; Brown Depo, p. 112.

36. Google and other companies' help pages inform users of Google's data collection.

Class members could have learned of Google's data collection through various support and other publicly available pages that inform users of what data Google used to serve them ads. For example, the Google help page called "How private browsing works in Chrome" explains that "[c]ookies and site data are remembered while you're browsing, but deleted when you exit Incognito mode."<sup>35</sup> It further explains that "[y]our activity, like your location, might still be visible to: [w]ebsites you visit, including the ads and resources on those sites[;] [w]ebsites you sign in to; [y]our employer, school, or whoever runs the networks you're using[;] [y]our internet service provider[; and] [s]earch engine." This page also specifically discloses that "[a] web service, website, search engine, or provider may be able to see [y]our IP address, which can be used to identify the general area you're in[;] [y]our activity when you use a web service[;] [y]our identity if you sign into a web services, like Gmail."<sup>36</sup> Another Google help page, "How Chrome Incognito keeps your browsing private," explains that "Chrome doesn't tell websites, including Google, when you're browsing privately in incognito mode." It explains "[w]hat Incognito mode doesn't do" including: "[p]revent your activity or location from being visible to the websites you visit, your school, employer, or your Internet Service provider" or "[p]revent the websites you visit from serving ads based on your activity during an Incognito session." It explains that "[a]fter you close all Incognito windows, websites won't be able to serve ads to you based on your signed-out activity during that closed session."<sup>37</sup>

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<sup>35</sup> Google Chrome Help, "How private browsing works in Chrome," available at <https://perma.cc/Q5JW-H45J>.

<sup>36</sup> Google Chrome Help, "How private browsing works in Chrome," available at <https://perma.cc/Q5JW-H45J>.

<sup>37</sup> Google Chrome Help, "How Chrome Incognito keeps your browsing private," available at <https://perma.cc/W2P3-WJ58>.



37. Similarly, Microsoft Edge's private browsing page explains that private browsing does not "[h]ide our browsing from your school, employer, or internet service providers[;] [g]ive you additional protection from tracking by default[;] [or] [a]dd additional protection to what's available in normal browsing." A Microsoft Edge help page also provides details of "[w]hat data is collected or stored, and why" and provides instructions to limit the amount of data collected.<sup>38</sup> Another Microsoft help page notes that "[w]ebsites can still personalize content for you during your InPrivate browsing session because cookies and other site permissions aren't deleted until you close all InPrivate windows."<sup>39</sup>

38. And Safari's private browsing pop-up also explains that "[a]fter you close this window, Safari won't remember the pages you visited, your search history, or your Autofill information."

39. Advertising campaigns to educate users on privacy awareness. Google is a member of industry groups such as Digital Advertising Alliance (DAA) and Network Advertising Initiative (NAI) that create and follow disclosure standards in online advertising.<sup>40</sup> When users see ads on non-Google websites, including while in a private browsing mode, the ads are accompanied by an "AdChoices" icon that, when clicked, shows users that the ad is served through Google Ads.<sup>41</sup> The

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<sup>38</sup> Microsoft, "Microsoft Edge, browsing data, and privacy," available at <https://perma.cc/NPA2-N523>.

<sup>39</sup> Microsoft, "Browse InPrivate in Microsoft Edge," available at <https://perma.cc/GZ52-TJTC> and <https://support.microsoft.com/en-us/microsoft-edge/browse-inprivate-in-microsoft-edge-cd2c9a48-0bc4-b98e-5e46-ac40c84e27e2>.

<sup>40</sup> "Why you're seeing an ad," available at <https://perma.cc/M4YC-J5QK>.

<sup>41</sup> Google, "AdChoices for the Google Display Network – Google Ad Manager Help," available at <https://perma.cc/XX3X-M6N9>.

“AdChoices” icon also allows users to click on an icon titled “Why this ad?” that provides information on what type of data Google used to serve the ad.<sup>42</sup>

40. Apple also actively promotes privacy awareness by educating users through pop-ups and advertising campaigns.<sup>43</sup>

41. Various media sources, such as public media sources that discussed Google’s collection of data in Incognito mode and/or private browsing mode more generally, as far back as 2008. **Exhibit 1** shows examples of 50 articles discussing Google’s collection of data while users were browsing in private browsing mode. For example:

- A 2008 CMP TechWeb article states that “Incognito, according to Google’s statement, is intended to prevent information from being left on the user’s computer. It is not, in other words, an anonymization service... Consumer Watchdog argues that Chrome’s Incognito mode does not confer the privacy that the mode’s name suggests.”<sup>44</sup>
- A 2014 Al Jazeera article explained that “[d]epending on what information you are trying to protect and from whom, private browsing might not be the right solution” because “private browsing doesn’t mask your activity from Internet service providers, search engines or websites that you visit. Sites that you go to still receive information about you like location, browser information and IP address. Cookies are still dropped and are cleared only when you close the window.”<sup>45</sup>

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<sup>42</sup> Ads Help, “Why you’re seeing an ad,” available at <https://perma.cc/M4YC-J5QK>. Based on Google’s “Why you’re seeing an ad” support page, there are many explanations that may appear as reasons why a user may see an ad, including: (1) User info in the user’s Google account, “like age range and gender,” and the user’s general location; (2) User activity, like “[y]our current search query,” “[p]revious search activity,” “[y]our activity while you were signed in to Google,” “[y]our previous interactions with ads,” and “[t]ypes of websites you visit,” and “[y]our activity on another device”; and (3) other info, such as “[i]nfo you gave to an advertiser, like if you signed up for a newsletter with your email address.” The AdChoices icon also allows users to learn when information about their interests may be received or used, and gives users control over how their data is received and used for ads.

<sup>43</sup> Apple and Privacy, available at <https://perma.cc/95B9-4KXC>.

<sup>44</sup> CMP TechWeb, “Google Chrome Privacy Issues Prompts Plea to Google Execs,” November 4, 2008, available at <https://perma.cc/HJ3T-Z8ER>.

<sup>45</sup> Sara M. Watson (24 Sep 2014). “As the Decoder: How private is private browsing, really?” Al Jazeera, available at <https://perma.cc/88KC-BHDK>.

- A 2017 article from CNET reported that “[a] lot of people think their searches aren’t tracked in private browsing mode. Unfortunately, that’s not true.”<sup>46</sup>
- A 2018 article published by The Sun and NYPost explains that “Google can still record the websites you browse while in Incognito Mode on the Chrome browser and link them to your identity.”<sup>47</sup>
- A 2019 Wired article discussed “the long-known fact that Incognito isn’t truly anonymous” and that “new research has re-emphasised that Google and other web browsers are still tracking you in privacy mode, even on the most sensitive of sites.”<sup>48</sup>

42. Certain class members could have also known about Google’s data collection by virtue of being employed in the computer technology industry or utilizing browser developer tools.

More than four million people in the U.S. work in “Computer Occupations,” which is a Bureau of Labor Statistics occupation group that includes computer system analysts, information security analysts, computer programmers, and software and web developers.<sup>49</sup> It is reasonable to assume that at least some of the workers in Computer Occupations would have known that Google receives the At-Issue Data when in private browsing modes.

43. Additionally, Chrome, Safari, and Edge provide Developer Tools that allow users to see transmission to Google while they are in private browsing mode. A user can right click on the webpage and click “Inspect” and a list of entities receiving transmissions will be visible.<sup>50</sup>

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<sup>46</sup> CNET, “Brave Browser Offers to Boost Your Online Search Privacy,” December 14, 2017, available at <https://perma.cc/AM7Y-QTN5>.

<sup>47</sup> Sean Keach, “Google’s incognito mode isn’t as private as you thought,” *The Sun*, August 22, 2018, available at <https://perma.cc/UWU4-MHHE>.

<sup>48</sup> Clarke, Laurie, “Google Chrome’s Incognito Mode is Way Less Private Than You Think,” July 20, 2019, Wired, available at <https://perma.cc/2HGG-GWHN>, accessed on May 12, 2022.

<sup>49</sup> Bureau of Labor Statistics, Occupational Employment and Wage Statistics, May 2020 data, available at <https://perma.cc/H9G2-XGZ3>.

<sup>50</sup> *See, e.g.*, TAC ¶ 86.